BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

EARL W. GRIFFITH
Claimant
VS.

THE BOEING COMPANY - WICHITA
Respondent
AND

AETNA CASUALTY & SURETY
Insurance Carrier
AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 170,249

ORDER

ON the 18th day of January, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge John D. Clark on December 14, 1993, came on for oral argument by telephone conference.

APPEARANCES

The claimant appeared by and through his attorney, Thomas E. Hammond, of Wichita, Kansas. The respondent and its insurance carrier appeared by and through their attorney, Frederick L. Haag, of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, John C. Nodgaard, of Wichita, Kansas. There were no other appearances.

RECORD

The record considered by the Appeals Board is the same as that specifically set out in the Award of the Administrative Law Judge.

STIPULATIONS

The stipulations are hereby adopted by the Appeals Board as specifically set forth in the Award of the Administrative Law Judge.

ISSUES

(1) Whether claimant's alleged accidental injury arose out of and in the course of his

employment with the respondent.

(2) Average weekly wage.

(3) The nature and extent of claimant's disability, if any.

(4) Whether claimant is entitled to unauthorized and future medical.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, and in addition to the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

(1) Claimant's accidental injury did not arise out of his employment.

"Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case." Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, Syl. ¶ 3, 680 P.2d 556, *rev. denied 235 Kan. 1042 (1984).*

The burden of proof is upon the claimant to establish his right to an award for compensation by proving all the various conditions on which his right to a recovery depends. This must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

It is the function of the trier of fact to weigh the evidence to determine the credibility of witnesses, to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied 249 Kan. 778 (1991).*

It is alleged that claimant met with personal injury by accident on August 29, 1989 while in the course of his employment with the respondent. Earl Wayne Griffith is a 31-year old sheet metal assembler who at the time of his accident had been working for The Boeing Company since April of 1989. On the date of accident he was sitting on a stool approximately 3½ feet above the concrete floor surface. At that time he suffered a seizure which caused him to fall off the stool onto the floor injuring his shoulder. Claimant had experienced a prior seizure at work and was on medication for depression at the time of the subject seizure.

Claimant relates having a feeling of being real scatter-brained and the next thing he knew he was being put into an ambulance and taken to St. Joseph Hospital.

Claimant alleges that his injury arose out of his employment due to the fact that had he not been at work sitting on a stool when he suffered the seizure then he would not have fallen from the stool to the concrete floor and suffered the resulting injury. Claimant cites Bennett v. Wichita Fence Co., 16 Kan. App. 2d 458, 824 P.2d 1001, *rev. denied 250 Kan. 804 (1992)* in support of his argument. In that case the claimant suffered an epileptic seizure while driving a motor vehicle for his employer and struck a tree. The Court of Appeals found:

> "Where the injury is clearly attributable to a personal condition of the employee, and no other factors intervened to cause or contribute to the injury, no compensation award is allowed; but where the injury is the result of the concurrence of some preexisting personal condition and some hazard

of employment, compensation is generally allowed." Syl. ¶ 2 at 458.

An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidence of the employment. Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980); Hensley v. Carl Graham Glass, 226 Kan. 256, 597 P.2d 641 (1979).

Respondent and Fund argue that the claimant has not presented evidence that the work activity either caused claimant to have the seizure which resulted in his fall or that the resulting injury was in any way causally connected to the employment. Rather, the employment did not expose claimant to any increased risk of injury beyond what would otherwise be incidental to normal day-to-day living activities. In addition to the above mentioned decisions, respondent also cites the Kansas Supreme Court case of Cox v. Refining Co., 108 Kan. 320, 195 Pac. 863 (1921). In that case, claimant had an epileptic seizure at work and after becoming unconscious fell against some hot pipes and severely injured his back. The Supreme Court denied compensation holding that:

> "[T]he accident which caused plaintiff's injury flowed from his epileptic seizure, and that this particular recurrence of periodic malady from which claimant had suffered for so many years was not provoked by his employment, nor did his employment contribute in any degree to bring on such epileptic seizure." Cox at 327.

The Appeals Board agrees with the finding of the Administrative Law Judge that the claimant did not suffer personal injury by accident arising out of and in the course of his employment with the respondent. The injury suffered by claimant in this case is clearly attributable to a personal condition of the claimant. The evidence does not establish the employment placed claimant in a position which increased the effects of his fall. We are not persuaded that the mere act of sitting on a stool constitutes a "hazard of employment" so as to make compensable the injuries sustained by claimant in this accident.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated December 14, 1993, is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of March, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Thomas E. Hammond, P.O. Box 47370, Wichita, Kansas 67201-7370
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John D. Clark, Administrative Law Judge
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